

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 527

Introduced by Assembly Member Beth Gaines

February 20, 2013

An act to amend Section ~~6253~~ of 12894 of, and to add Section 12895 to, the Government Code, relating to ~~public records~~ greenhouse gases.

LEGISLATIVE COUNSEL'S DIGEST

AB 527, as amended, Beth Gaines. ~~California Public Records Act. Global Warming Solutions Act of 2006: Western Climate Initiative, Incorporated.~~

(1) *The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum, technologically feasible, and cost-effective greenhouse gas emissions reductions. Existing law imposes conditions on the Western Climate Initiative, Incorporated, a nongovernmental entity created to assist the state board in the implementation of the act.*

Existing law, the Bagley-Keene Open Meeting Act, generally requires that all meetings of a state body be open and public. Existing law exempts the Western Climate Initiative, Incorporated, and its appointees from the Bagley-Keene Open Meeting Act when performing their duties.

This bill would repeal that exemption and instead subject the Western Climate Initiative, Incorporated, and its appointees to the Bagley-Keene

Open Meeting Act when performing their duties. The bill would prohibit the state board from making a payment pursuant to any agreement, contract, or revision of an agreement or contract entered into with the Western Climate Initiative, Incorporated, subsequent to January 1, 2014, unless the state board makes a finding that the Western Climate Initiative, Incorporated, has complied with, among other things, the Bagley-Keene Open Meeting Act.

~~The~~

(2) *The California Public Records Act requires state and local agencies to make public records available for inspection by the public, subject to specified criteria, and with specified exceptions.*

~~This bill would make technical, nonsubstantive changes to these provisions~~ *require the Western Climate Initiative, Incorporated, and its appointees to be subject to the California Public Records Act when performing their duties. The bill would prohibit the state board from making a payment pursuant to any agreement, contract, or revision of an agreement or contract entered into with the Western Climate Initiative, Incorporated, subsequent to January 1, 2014, unless the state board makes a finding that the Western Climate Initiative, Incorporated, has complied with, among other things, the California Public Records Act.*

(3) *Existing law sets out the authority and duties of the California State Auditor in conducting audits and surveys of specified entities. Existing law authorizes and provides access to the California State Auditor and his or her authorized representatives to examine and reproduce various records of any agency of the state.*

This bill would require the Western Climate Initiative, Incorporated, to be subject to any audit requested or required by the California State Auditor. The bill would prohibit the state board from making a payment pursuant to any agreement, contract, or revision of an agreement or contract entered into with the Western Climate Initiative, Incorporated, subsequent to January 1, 2014, unless the state board makes a finding that the Western Climate Initiative, Incorporated, has complied with, among other things, an audit conducted by the California State Auditor.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 12894 of the Government Code is*
2 *amended to read:*

3 12894. (a) (1) The Legislature finds and declares that the
4 establishment of nongovernmental entities, such as the Western
5 Climate Initiative, Incorporated, and linkages with other states and
6 countries by the State Air Resources Board or other state agencies
7 for the purposes of implementing Division 25.5 (commencing with
8 Section 38500) of the Health and Safety Code, should be done
9 transparently and should be independently reviewed by the
10 Attorney General for consistency with all applicable laws.

11 (2) The purpose of this section is to establish new oversight and
12 transparency over any ~~such~~ *of those* linkages and related activities
13 undertaken in relation to Division 25.5 (commencing with Section
14 38500) of the Health and Safety Code by the executive agencies
15 in order to ensure consistency with applicable laws.

16 (b) (1) The California membership of the board of directors of
17 the Western Climate Initiative, Incorporated, shall be modified as
18 follows:

19 (A) One appointee or his or her designee who shall serve as an
20 ex officio nonvoting member shall be appointed by the Senate
21 Committee on Rules.

22 (B) One appointee or his or her designee who shall serve as an
23 ex officio nonvoting member shall be appointed by the Speaker
24 of the Assembly.

25 (C) The Chairperson of the State Air Resources Board or her
26 or his designee.

27 (D) The Secretary for Environmental Protection or his or her
28 designee.

29 (2) ~~Sections 11120 through 11132 do not~~ *The Bagley-Keene*
30 *Open Meeting Act (Article 9 (commencing with Section 11120) of*
31 *Chapter 1 of Part 1 and the California Public Records Act*
32 *(Chapter 3.5 (commencing with Section 6250) of Division 7 of*
33 *Title 1) shall apply to the Western Climate Initiative, Incorporated,*
34 or to appointees specified in subparagraphs (C) and (D) of
35 paragraph (1) when performing their duties under this section.

36 (c) The State Air Resources Board shall provide notice to the
37 Joint Legislative Budget Committee, consistent with that required
38 for Department of Finance augmentation or reduction

1 authorizations pursuant to subdivision (e) of Section 28.00 of the
2 annual Budget Act, of any funds over one hundred fifty thousand
3 dollars (\$150,000) provided to the Western Climate Initiative,
4 Incorporated, or its derivatives or subcontractors no later than 30
5 days prior to transfer or expenditure of these funds.

6 (d) The Chairperson of the State Air Resources Board and the
7 Secretary for Environmental Protection, as the California voting
8 representatives on the Western Climate Initiative, Incorporated,
9 shall report every six months to the Joint Legislative Budget
10 Committee on any actions proposed by the Western Climate
11 Initiative, Incorporated, that affect California state government or
12 entities located within the state.

13 (e) For purposes of this section, “link,” “linkage,” or “linking”
14 means an action taken by the State Air Resources Board or any
15 other state agency that will result in acceptance by the State of
16 California of compliance instruments issued by any other
17 governmental agency, including any state, province, or country,
18 for purposes of demonstrating compliance with the market-based
19 compliance mechanism established pursuant to Division 25.5
20 (commencing with Section 38500) of the Health and Safety Code
21 and specified in Sections 95801 to 96022, inclusive, of Title 17 of
22 the California Code of Regulations.

23 (f) A state agency, including, but not limited to, the State Air
24 Resources Board, shall not link a market-based compliance
25 mechanism established pursuant to Division 25.5 (commencing
26 with Section 38500) of the Health and Safety Code and specified
27 in Sections 95801 to 96022, inclusive, of Title 17 of the California
28 Code of Regulations with any other state, province, or country
29 unless the state agency notifies the Governor that the agency
30 intends to take ~~such~~ *that* action and the Governor, acting in his or
31 her independent capacity, makes all of the following findings:

32 (1) The jurisdiction with which the state agency proposes to
33 link has adopted program requirements for greenhouse gas
34 reductions, including, but not limited to, requirements for offsets,
35 that are equivalent to or stricter than those required by Division
36 25.5 (commencing with Section 38500) of the Health and Safety
37 Code.

38 (2) Under the proposed linkage, the State of California is able
39 to enforce Division 25.5 (commencing with Section 38500) of the
40 Health and Safety Code and related statutes, against any entity

1 subject to regulation under those statutes, and against any entity
2 located within the linking jurisdiction to the maximum extent
3 permitted under the United States and California Constitutions.

4 (3) The proposed linkage provides for enforcement of applicable
5 laws by the state agency or by the linking jurisdiction of program
6 requirements that are equivalent to or stricter than those required
7 by Division 25.5 (commencing with Section 38500) of the Health
8 and Safety Code.

9 (4) The proposed linkage and any related participation of the
10 State of California in *the Western Climate Initiative, Incorporated*,
11 shall not impose any significant liability on the state or any state
12 agency for any failure associated with the linkage.

13 (g) The Governor shall issue findings pursuant to subdivision
14 (f) within 45 days of receiving a notice from a state agency, and
15 shall provide those findings to the Legislature. The findings shall
16 consider the advice of the Attorney General. The findings to be
17 submitted to the Legislature shall not be unreasonably withheld.
18 The findings shall not be subject to judicial review.

19 (h) *The Western Climate Initiative, Incorporated, shall be*
20 *subject to any audit requested or required by the California State*
21 *Auditor.*

22 SEC. 2. *Section 12895 is added to the Government Code, to*
23 *read:*

24 12895. *The State Air Resources Board shall not make a*
25 *payment pursuant to any agreement, contract, or revision of an*
26 *agreement or contract entered into with the Western Climate*
27 *Initiative, Incorporated, subsequent to January 1, 2014, unless the*
28 *State Air Resources Board makes a finding that the Western*
29 *Climate Initiative, Incorporated, has complied with all of the*
30 *following:*

31 (a) *The Bagley-Keene Open Meeting Act (Article 9 (commencing*
32 *with Section 11120) of Chapter 1 of Part 1).*

33 (b) *The California Public Records Act (Chapter 3.5*
34 *(commencing with Section 6250) of Division 7 of Title 1).*

35 (c) *An audit conducted by the California State Auditor pursuant*
36 *to subdivision (h) of Section 12894.*

37 ~~SECTION 1. Section 6253 of the Government Code is amended~~
38 ~~to read:~~

39 ~~6253. (a) Public records are open to inspection at all times~~
40 ~~during the office hours of the state or local agency and every person~~

1 has a right to inspect any public record, except as hereafter
2 provided. Any reasonably segregable portion of a record shall be
3 available for inspection by any person requesting the record after
4 deletion of the portions that are exempted by law.

5 (b) Except with respect to public records exempt from disclosure
6 by express provisions of law, each state or local agency, upon a
7 request for a copy of records that reasonably describes an
8 identifiable record or records, shall make the records promptly
9 available to any person upon payment of fees covering direct costs
10 of duplication, or a statutory fee if applicable. Upon request, an
11 exact copy shall be provided unless impracticable to do so.

12 (c) (1) Each agency, upon a request for a copy of records, shall,
13 within 10 days from receipt of the request, determine whether the
14 request, in whole or in part, seeks copies of disclosable public
15 records in the possession of the agency and shall promptly notify
16 the person making the request of the determination and the reasons
17 therefor. In unusual circumstances, the time limit prescribed in
18 this section may be extended by written notice by the head of the
19 agency or his or her designee to the person making the request,
20 setting forth the reasons for the extension and the date on which
21 a determination is expected to be dispatched. The notice shall not
22 specify a date that would result in an extension for more than 14
23 days. When the agency dispatches the determination, and if the
24 agency determines that the request seeks disclosable public records,
25 the agency shall state the estimated date and time when the records
26 will be made available.

27 (2) As used in this subdivision, "unusual circumstances" means
28 the following, but only to the extent reasonably necessary to the
29 proper processing of the particular request:

30 (A) The need to search for and collect the requested records
31 from field facilities or other establishments that are separate from
32 the office processing the request.

33 (B) The need to search for, collect, and appropriately examine
34 a voluminous amount of separate and distinct records that are
35 demanded in a single request.

36 (C) The need for consultation, which shall be conducted with
37 all practicable speed, with another agency having substantial
38 interest in the determination of the request or among two or more
39 components of the agency having substantial subject matter interest
40 therein.

1 ~~(D) The need to compile data, to write programming language~~
2 ~~or a computer program, or to construct a computer report to extract~~
3 ~~data.~~

4 ~~(d) This chapter shall not be construed to permit an agency to~~
5 ~~delay or obstruct the inspection or copying of public records. The~~
6 ~~notification of denial of any request for records required by Section~~
7 ~~6255 shall set forth the names and titles or positions of each person~~
8 ~~responsible for the denial.~~

9 ~~(e) Except as otherwise prohibited by law, a state or local agency~~
10 ~~may adopt requirements for itself that allow for faster, more~~
11 ~~efficient, or greater access to records than prescribed by the~~
12 ~~minimum standards set forth in this chapter.~~